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10/531,776

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EXAMINER

WOMACK, DOMINIQUE A

ART UNIT

PAPER NUMBER

4132

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,776	<b>Applicant(s)</b> MAJOOR ET AL.	
	<b>Examiner</b> DOMINIQUE WOMACK	<b>Art Unit</b> 4132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060117</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show height (H) in figure 5 as described in the specification. There is no figure 5 included in the drawings. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p) (4) because reference character “10” has been used to designate both an “inclined part” and a “tear-off strip”. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should

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include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 2 refers to a height that is not shown in the figures. The specification says this height (H) is shown in Figure 5 but there is no Figure 5. Please include Figure 5 in the specification.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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3. Claim 15 provides for the use of a plastic container, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 15 is also rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claim 1, the claim limitation “means (7,8) for substantially fixing the ridge (5) in the axial direction of the neck” uses the phrase “means for” or “step for”, but it is modified by some structure, material or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because specification describes means for fixing the ridge in the downward direction as a protrusion (7) of the neck (2) lies against an inclined part (10) of the bottom part of the closure (3), as shown in Figure 2. The specification describes means for fixing the ridge in the upward direction as a web (8) lies against the upper ridge (9) of the neck (2), also shown in Figure 2. It is unclear what is the relationship between the means

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“(7) and (8)” to the claimed means for fixing the ridge in the axial direction of the neck, in the context of invoking section 112, sixth paragraph. It is unclear whether the claimed structure is or is not sufficient structure to preclude invoking 112, sixth paragraph.

6. If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase "means for" or "step for" is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.

7. If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase “means for” or “step for”).

8. Regarding claim 6, the claim recites the limitation "the bottle" in lines 2 and 3 of the claim. There is insufficient antecedent basis for this limitation in the claim. Claim 1, from which claim 6 depends, does not refer to the limitation, "the bottle".

9. Regarding claims 8-9, it is not clear what is meant by the limitation “hinge (9)”. The specification discloses that (9) is the upper ridge of the neck (2) and that the hinge is (11) of Figure 3. It is unclear whether the limitation “hinge (9)” is a typographical error or whether the limitation means something else.

10. Regarding claim 10, it is not clear what is meant by the limitation “tear-off strip (10)”. The specification discloses that (10) is the inclined part of the bottom part of the closure (3) and that the tear-off strip is (12) of Figure 2. It is unclear whether the limitation “tear-off strip (10)” is a typographical error or whether the limitation means something else.

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11. Regarding claim 14, the claim depends upon itself and it is unclear what the intended scope of the claim is. For the purposes of initial examination, claim 14 will be interpreted to depend from claim 13.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claims 1-5 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,723], in view of Kohl [US Pat No 5,499,736], and in further view of Goodall [US Pat No 6,041,953].

16. Regarding claim 1, Bergholtz discloses an injection molded blank made from plastic. This plastic blank can take the shape of a bottle. The bottle comprises a body, a bottle head (neck) and a base. (col. 1, lines 23-27). Bergholtz further discloses a snap-on closure (col. 1, lines 34-41).

17. Regarding claim 1, Bergholtz fails to disclose a snap-on closure comprising a peripheral skirt with a ridge intended for engagement with the inner surface of the neck.

18. Kohl discloses a snap-on lid for a container comprising an annular latch arm (skirt) (Fig. 2, #72) and a smaller seal lock wall (Fig. 2, #74) spaced radially outwardly of the latch arm and defining a sealing and locking groove (Fig. 2, #76). The latch arm includes a locking ledge (Fig. 2, #78) (ridge) adapted to cooperatively engage the latch shoulder (Fig. 2, #66) (col. 5, lines 57-67).

19. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the latch arm and locking ledge of Kohl to the snap-on closure of Bergholtz in order to form a snap-on closure with a skirt and a ridge. One of ordinary skill in the art would be motivated to form a snap-on closure with a skirt and a ridge because Kohl teaches that a cap body with this construction forms a strong fluid-tight seal between cap body and bottle opening (col. 5, lines 18-21).



20. Regarding claim 1, Bergholtz in view of Kohl fails to disclose a snap-on closure wherein the free outer diameter of the ridge is slightly higher than the free inner diameter of the neck.

21. Goodall discloses a snap-on closure where the outer diameter of the closure ( $D_1$ ) is larger than the inner diameter of the neck of the container ( $D_2$ ) (col. 8, lines 52-58).

22. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate the diameter relationship of Goodall to the snap-on closure of Bergholtz in view of Kohl in order to have a snap-on closure wherein the free outer diameter of the ridge is slightly higher than the free inner diameter of the neck. One of ordinary skill in the art would be motivated to have this diameter relationship between the snap-on closure and the neck of the container because Goodall discloses that this type of diameter relationship locks the closure into the container.

23. Regarding claim 2, Bergholtz in view of Kohl and in further view of Goodall is interpreted to read on the claimed limitations because the snap-on closure is in a locked relationship with the container, thus the tolerance of movement in zero.

24. Regarding claim 3, Bergholtz discloses a container where the inner sealing surface of the neck is smooth (col. 4 lines 38-55).

25. Regarding claim 4, Bergholtz discloses that in order to obtain a good and reliable seal, the snap-on closure is composed of a softer thermoplastic material than the head of the package (col. 4, lines 56-61). It is well known in the art that the lower the Shore D Hardness of a material, the softer it is.

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26. Regarding claim 5, it would have been obvious to one of ordinary skill in the art at the time of the invention for Shore D hardness of the material of the ridge to be 65 or smaller and the Shore D Hardness of the material of the neck to be 70 or higher because “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). See MPEP § 2114.05 II. In the instant case, Bergholtz discloses that in order to obtain a good and reliable seal, the snap-on closure is composed of a softer thermoplastic material than the head of the package (col. 4, lines 56-61). It is well known in the art that the lower the Shore D Hardness of a material, the softer it is.

27. Regarding claim 10, Bergholtz in view of Kohl fails to disclose a snap-on closure wherein the snap-on closure comprises a circumferential tear-off strip.

28. Regarding claim 10, Goodall discloses a snap-on cap and container that are provided with a tamper evident structure. The container comprises a tamper evident band that once removed, unlocks the cap from the container.

29. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add a tamper evident band to the snap-on closure and container of Bergholtz in view of Kohl in order to prevent tampering. One of ordinary skill in the art would be motivated to prevent tapering because it ensures that the product enclosed in the container will remain suitable for end consumer use.

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30. Regarding claim 11, Bergholtz fails to disclose a snap-on closure wherein the material of ridge substantially consists of LLDPE.

31. Regarding claim 11, Kohl discloses that the snap-on closure is preferably constructed of LLDPE (col. 4, lines 50-53).

32. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the material of Kohl to snap-on closure of Bergholtz in order to have a snap-on cap made of flexible, resilient thermoplastic material approved for food contact. One of ordinary skill in the art would be motivated to have a snap-on closure made of flexible, resilient thermoplastic material approved for food contact because Kohl discloses that this type of material allows for fluid tight seals after repeated opening and closing of the closure (col. 4, lines 43-50).

33. Regarding claim 12, Bergholtz discloses that the container can be a bottle (col. 1, lines 23-27).

34. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,723], in view of Kohl [US Pat No 5,499,736], in view of Goodall [US Pat No 6,041,953], and in further view of Heckman [US Pat No 4,248,030].

35. Bergholtz in view of Kohl and in further view of Goodall is relied upon as above with respect to claim 1.

36. Bergholtz in view of Kohl and in further view of Goodall fails to disclose a container wherein only the bottle and neck are largely covered with oriented polystyrene.

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37. Heckman discloses a container that has a sleeve covering its bottle and neck (Fig. 10).

The sleeve can be made of oriented polystyrene (col. 4, lines 23-32).

38. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the oriented polystyrene sleeve of Heckman to the container of Bergholtz in view of Kohl and in further view of Goodall in order to provide a container with an oriented polystyrene wrapping. One of ordinary skill in the art would be motivated to provide a container with an oriented polystyrene wrapping because the oriented polystyrene sleeve of Heckman forms a snug engagement with the exterior surfaces of the container, serves as a label, and forms a composite package (col. 4, 16-22 and claim 10).

39. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,723], in view of Kohl [US Pat No 5,499,736], in view of Goodall [US Pat No 6,041,953], and in further view of Contreras, Sr. [US Pat No 4,693,392].

40. Bergholtz in view of Kohl and in further view of Goodall is relied upon as above with respect to claim 1.

41. Bergholtz in view of Kohl and in further view of Goodall fails to disclose a container with a click hinge.

42. Contreras discloses a closure member that has a hinge and boss assembly for association with a container that when moved into the open position makes an audible click during the use of the container (col. 2, lines 43-47). The hinge and

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43. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the hinge and boss assembly of Contreras to snap-on closure and container of Bergholtz in view of Kohl and in further view of Goodall in order to have a click-hinge. One of ordinary skill in the art would be motivated to have a click-hinge because the audible click lets the user know when the closure is in the fully closed or opened position (Contreras, col. 7, lines 21-39).

44. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,723], in view of Kohl [US Pat No 5,499,736], in view of Goodall [US Pat No 6,041,953], and in further view of Kinney [US Pat No 3,544,338].

45. Bergholtz in view of Kohl and in further view of Goodall is relied upon as above with respect to claim 1.

46. Bergholtz in view of Kohl and in further view of Goodall fails to disclose a container with filled with a sterilized or pasteurized microbiologically sensitive food product having a ph of 6 to 8.

47. Kinney discloses that milk can be enclosed in can be added to a blow molded thermoplastic container with a snap closure (col. 3, lines 62-65). It is well known in the art that milk can be pasteurized and that milk has a ph of 6.9.

48. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to include milk as the contents of the container of Bergholtz in view of Kohl and in further view of Goodall in order to provide a container with a consumable product inside. One of ordinary skill in the art would be motivated to place milk in the container of Bergholtz in view of Kohl

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and in further view of Goodall because the container is aseptic closure suitable for flowable media as taught by Bergholtz (col. 1, lines 50-64).

***Conclusion***

49. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIQUE WOMACK whose telephone number is (571)270-7366. The examiner can normally be reached on Monday-Thursday, 8:00am-5:00pm.

50. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike LaVilla can be reached on 571-272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

51. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W./  
Dominique Womack  
Examiner, Art Unit 4132  
31 December 2008

/Alicia Chevalier/  
Primary Examiner, Art Unit 1794